



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2013/0071
Appellant: Mrs D Havercroft
Respondent: The Information Commissioner
SSJudge: NJ Warren
Member: A Chafer
Member: G Jones
Hearing Date: 17 January 2014
Decision Date: 10 February 2014

DECISION NOTICE

1. In February 2012 Mrs Havercroft complained that three NHS managers were in breach of their code of conduct. There were eight allegations in all, the earliest going back to 2008. An independent company was commissioned, at a cost of about £20,000 to investigate the complaints. The complaints were not upheld.
2. On 7 October 2012 Mrs Havercroft asked NHS Bristol for a copy of the investigation report; its conclusions; the names of witnesses interviewed; and the evidence on which the conclusions were based. The request, which was made under the Freedom of Information Act (FOIA) was refused. Mrs Havercroft complained unsuccessfully to the Information Commissioner (ICO) and now appeals to the Tribunal against the ICO decision.
3. Mrs Havercroft has received a heavily edited version of the report. This was intended to meet NHS Bristol's responsibilities to comply with a request for access to her own personal data. We need not deal with this in any detail because subject access requests under the Data Protection Act (DPA) are outside our jurisdiction.

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4. There is no dispute that the information requested comprises the personal data of persons other than Mrs Havercroft. In particular, the destinations for copies of the report include the personnel files of the three managers. The issue in this case therefore is whether the requested information is exempt information under section 40(2) FOIA. FOIA does not trump the rights to privacy contained in the DPA and personal data cannot be released except in accordance with the data protection principles. Personal data must be processed fairly and lawfully and, in particular, must not be processed unless at least one of the conditions in schedule 2 of the Act is met.

5. In her notice of appeal, Mrs Havercroft relies upon two elements in schedule 2. These are:-

“(a) The processing is necessary for administering justice or for exercising statutory governmental or other public functions.

[This is a summary of para 5 Schedule 2.]

(b) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

[This is para 6(1) of Schedule 2.]

6. We do not accept that para 5 Schedule 2 applies. Disclosure under FOIA would not assist any of the functions there listed.

7. In respect of para 6(1), Mrs Havercroft argues that there is a legitimate interest in the public seeing evidence that health service managers are fit and proper persons to be entrusted with commissioning safe health services and that appropriate action is taken in the interests of public protection if they are not. In answer to an enquiry from the Tribunal she says that she does not trust the statements made by NHS Bristol about the investigator’s findings because there are different ways in which they have been described (see page 39) and that senior officers should not be

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allowed to hide behind the DPA. The public interest requires scrutiny as to whether they are fit and proper persons to hold senior positions.

8. We are unable to accept that Mrs Havercroft or the wider public have the legitimate interest which she claims. She has made a series of complaints. There has been an independent investigation. The complaints have been rejected. In our judgement that is where the matter rests. There is no likely beneficial consequence of disclosure to the whole world under FOIA which makes it necessary for personal data to be processed in this way.
9. We therefore conclude that disclosure under FOIA would not be lawful processing of personal data. It follows that NHS Bristol were correct to refuse the information under Section 40(2) FOIA.
10. The ICO initially analysed the problem in terms of fairness rather than lawfulness. We have approached the question first in terms of lawfulness, but we would additionally accept the ICO arguments that disclosure to the world under FOIA of the personal data would also be unfair.
11. We have seen a copy of the disputed information but would have reached the same conclusion without having done so.
12. Mrs Havercroft originally requested a hearing of the appeal but later consented, as did the other parties, to the case being dealt with without a hearing. We were satisfied that we could properly do so.

NJ Warren

Chamber President

Dated 10 February 2014